# Self-Represented Litigants in Nova Scotia

## Needs Assessment Study

March 2004

Department of Justice
Court Services
Halifax, Nova Scotia

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The Working Committees from each level of court are instrumental to this project. We thank these volunteers who generously assisted us during the monthly or bi-monthly meetings. Court staff deserve special mention for taking the time they did not really have to meet with the project team during this needs assessment study and for candidly and thoughtfully answering our questions.

We would also like to thank: Marian Tyson, for recognizing the importance of this topic and creating a project entirely devoted to this issue affecting judiciary, staff and self-represented Litigants; Diane MacGregor (Communications NS) for not only editing this report but, for giving so much of her time to show us the importance of using plain language in the brochures; and Elaine Chitouras and Carolyn Downie for their patience in editing the report.

This report is only one facet of this project that we believe will help identify and achieve the project's goals. As the project moves forward, we again thank everyone who continues to be involved in it.

Anna Paton
Yetta Withrow

## Executive Summary

The Self-Represented Litigants Project of the Court Services division of the Nova Scotia Department of Justice surveyed 40 judges, 163 court staff and 58 self-represented litigants (SRLs) to identify the greatest needs for courts and SRLs and to make recommendations to improve services and develop realistic programs for SRLs. The project team also observed 20 court hearings that involved the participation of one or more SRLs.

The interviews, focus groups and questionnaires used by the SRL project team confirmed our expectations that:

- SRLs are impacting in a significant way on the day to day administration of the courts.
- SRLs often do not have sufficient knowledge to adequately represent themselves and may be disadvantaged by representing themselves.
- SRLs are most common in family and criminal matters, and before the Small Claims Court of Nova Scotia.
- SRLs would benefit from additional resources, e.g. brochures and do-it-yourself kits.

The team also learned that:

- SRLs need the most assistance at the pre-filing stage.
- SRLs usually do not distinguish between "legal information" that can be provided by staff and "legal advice" that can be provided by a lawyer.
- The other party in a dispute with a SRL may be disadvantaged by the fact that the other side is not represented.

The SRLs who participated in the process had the following characteristics:

- 45% were between the ages of 35 and 44 years; 19% were between 45 and 54.
- 29.3% had some university education; 24.1% were community college graduates.
- 31% had an annual income between $15,000 and $29,000; 29% had less than $15,000.
- 71% had access to the Internet and an e-mail address; 59% had a public library card.

SRLs indicated that they did not have a lawyer for varying reasons:

- 40% did not need or want one.
- 34% could not afford one.
- 26% were denied Legal Aid.

The court staff and judges who were interviewed highlighted the SRLs' lack of knowledge of the rules of evidence as a challenge facing the court system. They suggested that SRLs receive information on how to present a case, information on how to fill out forms, and information on court processes.

The report makes twenty (20) recommendations to improve the Department of Justice's service to self-represented litigants.

## Recommendations

**Recommendation #1:**
Develop processes and tools to assist staff and self-represented litigants at the pre-filing and filing stages of the court process.

**Recommendation #2:**
Train frontline staff in all courts and Family Court intake/Supreme Court (Family Division) conciliators to deal with self-represented litigants. Consider delegating specific staff members to handle self-represented litigant inquiries in high volume justice centres.

**Recommendation #3:**
Develop court staff guidelines to increase the consistency of answers from staff to litigants across the province. Differentiate between requests for legal information and legal advice.

**Recommendation #4:**
Provide court staff with training when legislation and court procedures change, so that they will be able to inform self-represented litigants of these changes.

**Recommendation #5:**
Prepare signage for court administration offices that outlines the difference between legal advice and legal information.

**Recommendation #6:**
Increase use of video *Your Day in Court* in the following ways:

- Make more use of video in the courts and consider making it available through associated organizations (governmental and non-governmental).
- Encourage all staff to view the video *Your Day in Court*, not just those operating in the family law area.
- Consider running the video *Your Day in Court* in waiting rooms, where suitable.
- Consider recommending the video *Your Day in Court* for viewing by non-family civil litigants.

**Recommendation #7:**
Compile a list of useful web-related information on court processes and services and make it available in print form at court sites.

**Recommendation #8:**
In terms of programs, consider province-wide availability of the Parent Information Program and Mediation. In the areas where these programs already exist, consider ways to promote these programs.

**Recommendation #9:**
In terms of resource allocation for materials development, pamphlets and brochures are better choices than videos . Print information for self-represented litigants should be made available on the Internet. When developing print information, keep in mind the following: use plain language, simplify existing forms and make them user friendly (fill-in forms), improve kits that are currently available, make precedent forms and information on costs and fees accessible to litigants.

**Recommendation #10:**
Develop the following information guides:

- court fees
- court room preparation (using exhibits, how to get disclosure, serving subpoenas, dealing with witnesses, requesting adjournments)
- improved family law kits
- options for resolving disputes out of court
- enforcing court orders and appealing court decisions

**Recommendation #11:**
Promote the Self-Represented Litigant Project and resource materials to staff including "Tips for Representing Yourself" which is available on the Internet.

**Recommendation #12:**
Develop programs that assist self-represented litigants in document and court preparation in collaboration with the Nova Scotia Barristers' Society and other legal services or information providers including Legal Information Society of Nova Scotia, libraries, Transition Houses and Community Centres.

**Recommendation #13:**
Provide public computer access terminals at courts and separate space in court facilities where self-represented litigants can get information about their court concerns. Develop information kiosks as part of public computer access which contain interactive programs for filling in forms.

**Recommendation #14:**
The immediate creation of any materials in terms of brochures or videos should first focus on family and criminal courts.

**Recommendation #15:**
Collaborate with the Bar and Bench to develop a program to deliver court preparative advice/information from lawyers or paralegals in high self-represented litigant volume courts. Support efforts to make legal advice available to (otherwise) self-represented litigants through *pro bono* initiatives.

**Recommendation #16:**
Where space permits, make the waiting areas more comfortable by adding children's toys, culturally diverse artwork on walls, vending machines, and reading materials. Where space permits, add waiting rooms to allow opposing parties to wait in separate rooms.

**Recommendation #17:**
Locate information racks in areas where litigants typically wait for services, preferably in view of court staff to discourage theft or irresponsible use of the contents. In centres where there are concerns about theft, fix information racks to the walls. Make more racks available where space permits.

**Recommendation #18:**
Place importance on the availability of current public information relevant to court and related support services at the justice centres by supporting the brochure distribution system and staff tasked with responsibility for it, including maintaining supplies.

**Recommendation #19:**
Investigate the purchase of another style of rack that will adequately display 8 ½ by 11" brochures.

**Recommendation #20:**
Provide Departmental support, including allocation of resources, for the creation of an information centre for self-represented litigants at the Halifax site of the Supreme Court (Family Division) in the immediate future, with continued input from the Self-Represented Litigant Project, site court administration and provincial Parent Information Program coordinator.

## Introduction and Background

The Court Services Division of the Department of Justice began examining the phenomenon of self-represented litigants in 2000. The focus at that time was the need to assist self-represented litigants at the "up front" application filing process and on ways to develop an understanding of what is expected of a self-represented litigant who goes to court.

During that time, Court Services staff were informally surveyed about the amount of time spent with self-represented litigants in proportion to their other daily work. A copy of the results of the survey is attached as Appendix 1.

The 2000 initiative was expanded into the larger Self-Represented Litigants Project (SRLP) in 2001. A project manager was hired to develop and implement specific strategies to address the challenges arising from the (perceived) increasing numbers of self-represented litigants.

### The Self-Represented Litigants Project

The goals are:

1. to develop a consistent strategy to improve services to self-represented litigants that are effective and understandable.
2. to develop realistic programs and tools to assist self-represented litigants at all levels of court administered by the province.
3. to improve current court services in practices and protocols for self-represented litigants and staff, to increase the efficiency of court administration and proceedings.
4. to implement the improved programs, tools, practices and protocols at all levels of court administered by the province.
5. to integrate the project initiatives with existing and developing initiatives in other departmental and non-governmental programs.

To accomplish these goals, the Self-Represented Litigants Project (SRLP) team set up an advisory committee and seven subcommittees (one for each court in the province and one to examine the concept of information centres). See Appendix 2 for a chart of the SRLP's structure. Members of the judiciary, bar, legal information community, and court administration staff volunteered on these committees. These committees have contributed largely and importantly to the project's accomplishments.

Through the advisory committee, the project is promoting collaborative efforts to address topical issues relating to the self-represented litigant. These include discussion about duty counsel, unbundled legal services, pro bono clinics for legal assistance and information, and court based legal information centres, to name a few.

Through the seven subcommittees, the project has been able to identify and produce self-help information guides on various topics. A list can be found in Appendix 3. They are distributed free of

charge at the courts, on the Department of Justice and other websites, and in limited other locations. These plain language guides provide step-by-step instruction on court procedures. Some have been translated into French.

## Chapter 1: Study Design and Methodology [1]

As the SRLP work progressed, the team saw the need for more information on the self-represented experience from self-represented litigants themselves, from staff, and the judiciary. This study was developed to investigate that experience and to achieve the first three project goals. The project team designed a series of research goals and from them created questions to ask of court staff, the judiciary, and self-represented litigants.

The specific research goals included:

- examine areas and stages of interaction between the self-represented litigant and court staff
- assess greatest needs for courts and self-represented litigants at court sites (physical and program needs)
- gain insight into volume by court and case type (criminal, civil) of self-represented litigants.

The research questions for court staff centred around these themes:

- When in the court process are self-represented litigants asking for and needing help?
- What kind of help are self-represented litigants asking for?
- What amount of time are court staff spending with self-represented litigants?
- What impact do self-represented litigants have on staff's job and court proceedings?
- What would staff like to be able to provide to self-represented litigants that they cannot?
- What are the biggest frustrations and perceived mistakes of self-represented litigants?
- What solutions would they suggest to respond to the challenge of self-representation?

The research questions for the judiciary centered around these themes:

- Whether and how self-represented litigants are disadvantaged by a lack of legal counsel?

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[1] Academics, court administration experts, and many others have made large contributions to the world wide body of research developing about self-represented litigants, and it continues. The project team has benefitted from reviewing some of this research: Access to Justice: Rt. Honourable Lord Woolf-1996; Report on Self-Represented Litigant - 1999 - Ontario Superior Court - Special Committee on Self-Represented Litigants; User-Friendly Justice - 1999 - Goldschmidt and Pilchen - American Judicature Society; Litigants in Person in the Family Court of Australia - 2000 - Family Court of Australia; Position Paper on Self-represented Litigation - 2000 - Conference of State Court Administrators (USA); Nevada Judiciary Self-Representation Survey - 2000 - Downey Research Associates; Litigants in Person Management Plans: Issues for Courts and Tribunals - 2001 - Australian Institute of Judicial Administration; Meeting the Challenge of Self-Represented Litigants in Wisconsin - 2000 - Wisconsin Pro Se Meeting Group; Meeting the Challenge of Pro Se Litigation - 1998 - Goldschmidt - American Judicature Society; Meeting the Pro Se Challenge: An Update - 2001 - Sampson - American Judicature Society; Lessons from the Country: Serving Self-Represented Litigants in Rural Jurisdictions - 2002 - Henschen - American Judicature Society.

- Whether and how represented parties are disadvantaged by having a self-represented litigant as an adversary ?
- What level of confidence and competence do self-represented litigants bring to the court room proceeding?
- What is the benefit to the court of legal representation for litigants?
- What are the biggest frustrations and perceived mistakes of self-represented litigants?
- What solutions would they suggest to respond to the challenge of self-representation?

Registrars of probate were asked the same questions as the judiciary due to their dual function in the courts: as administrators of the probate system and decision makers under the *Probate Act.*

## The Interview Process

Using these questions, three separate interview guides were developed for focus and consistency in application: one for individual interviews with court staff, registrars of probate, and judiciary; one for group discussions with a mix of court staff; and one for self-represented litigants. Some questions sought answers that could be measured in a quantitative way and others allowed for the individual's free-ranging response [See Appendices 4-6].

To prepare the courts for our study, the project team notified court administrators of our study months in advance of our intended visit, giving them copies of the interview guides and asking them to distribute them to judges, registrars, and staff, and to promote their participation in the study. The project team found that advance follow up with administrators (by telephone and informal presentation at administrators' meetings) was necessary to complete organizational planning for each site.

During the fall of 2002, the project team traveled to each of the 13 justice centres (excluding satellite courts): Yarmouth, Digby, Kentville, Bridgewater, Truro, Amherst, Antigonish, Port Hawkesbury, Sydney, and in Metro Halifax to the Halifax Law Courts, the Halifax Provincial Court, the Dartmouth Provincial Court, and the Supreme Court (Family Division).

## Court Staff

The interview guides for court staff were used in two ways. In each of the 13 justice centres the project team used the interview guide to conduct a group session and to conduct individual interviews. The project team asked that staff with court reporting, court clerking, front counter, program, and administration positions all form part of each group. The purpose was to have a mix of viewpoints concerning the self-represented litigant experiences heard and discussed, within the framework of the standardized questions, allowing for comparison with individual responses. Staff members interviewed as part of a group were not interviewed again individually.

As can be seen by the research questions above, two question areas appeared on both individual and group interview guides:

- What are the biggest frustrations and perceived mistakes of self-represented litigants?
- What suggestions do you have for Court Services in approaching the challenge of self-representation?

By asking the same questions of court staff and the judiciary the project team hoped to be able to compare and contrast responses and to reach some conclusions on the most effective changes with which to proceed [Chapter 6].

The SRLP team designed the interview guides for additional purposes. First, the interview guides assessed staff comfort/competency in handling questions being asked by self-represented litigants. Second, they acted as a tool for collecting sample questions being asked of them. Third, the data collected from Question #4 (What are some of the questions most often asked at the pre-filing, filing, pre-trial, trial, post-trial stage of legal proceedings?) is the foundation for a court staff training and reference guidelines, which is another facet of the SRL Project.

There are approximately 450 full-time employees in Court Services and 100 others who work on an hourly basis (court security and night court clerks) according to the Court Services Division 2002-2003 Business Plan. The project team met with 163 members of court staff and interviewed 84 individually and 79 in groups. (This includes the 11 registrars of probate).

## Judiciary

A total of 40 judges were either interviewed or filled out the questionnaires for the project team. They included Judges from the Provincial Court and Family Court, Justices of the Supreme Court (General Division and the Family Division), and Justices of the Court of Appeal.

## Self-Represented Litigants

In the winter and spring of 2002-03 the project team created the questionnaire for input from self-represented litigants [Appendix 6]. The research goals were somewhat more basic for self-represented litigants. The team wanted to determine

- who self-represented litigants are
- why they come to court without lawyers
- what their needs are
- how they believe the courts might best help them address these needs in the future

Funding and timing concerns were the determining factor in deciding how to collect this data from self-represented litigants. The project team also had concerns about using court facilities as a base from which to collect data, as self-represented litigants may not be at their most reflective in that setting. Because the project had already established a web page and email address,[2] distribution of the

[2] **www.gov.ns.ca/just/repselfmain.htm** and e-mail address **selfrep@gov.ns.ca**

questionnaire was principally made through the Department of Justice Internet site with links at the following agencies who were contacted with this request by the project team: Transition House Association of Nova Scotia (including all associated shelters), Legal Information Society of Nova Scotia, Nova Scotia Barristers' Society, and Sir James Dunn Law Library (Dalhousie University).

The project team also e-mailed the questionnaire to 28 self-represented litigants who had contacted the project by email as of January 23, 2003, encouraging them to take the time to reply. Questionnaires were also available in print form at each justice centre and the project team made individual telephone calls to court administrators to encourage them to promote the distribution and completion of the questionnaires.

The questionnaires were available at the courts for about two and a half months and on the Internet for about three months. In total, 58 completed questionnaires were received, 27 from court sites and 31 from the Internet.

The project team was hopeful that responses from self-represented litigants could be extrapolated to the general self-represented litigant experience in Nova Scotia. The team was aware that results might be skewed as a result of using the Internet as a data collection source. In a few cases, someone sent in more than one response, obvious because the answers and comments in the surveys were exactly the same. In these instances, the project team treated the second survey as a duplicate copy and it was not counted in the study. While the project team was aware that some self-represented litigants may have a negative motivation for completing the questionnaire that could skew the results, these responses were in no way discounted.

The project team also sought demographic information about the Nova Scotia self-represented litigant (age, income, gender, employment status, means of receiving and sending communications) to analyze how and where best to communicate with them.

The project team also asked why the SRL did not have a lawyer. The team wanted to know if it was because they did not meet Legal Aid eligibility, felt they did not need a lawyer, or if it was for some other reason.

Finally, the team provided prompts (type of case, what court, what stage of court) to assist SRLs in stating what type of questions they ask of court staff. SRLs also stated where they found information, what (unavailable) information would have been useful, and how helpful they found court staff to be.

## Court Facilities

A separate guide was developed to assess the physical layout of justice centres/courts. Its purpose was to assess the feasibility of information centres and improvement of information distribution at the court sites [Appendix 7].

## Observation of Court Hearings

Another guide was developed to allow for observational analysis of self-represented litigants in the court room. This enhanced the team's appreciation of the issues, experiences, and challenges facing the self-represented litigant in the court room. The purpose of the guide is to focus and provide consistency of observation criteria, given that the same individual would not be observing each proceeding [ Appendix 8]. This guide was modeled on a similar guide developed by a research team in Australia for the Family Court of Australia. [3]

[3] Litigants in Person in the Family Court of Australia: Dewar, Smith, Banks, A report to the Family Court of Australia, Research Report No.20, 2000

## Chapter 2: Responses from Court Staff

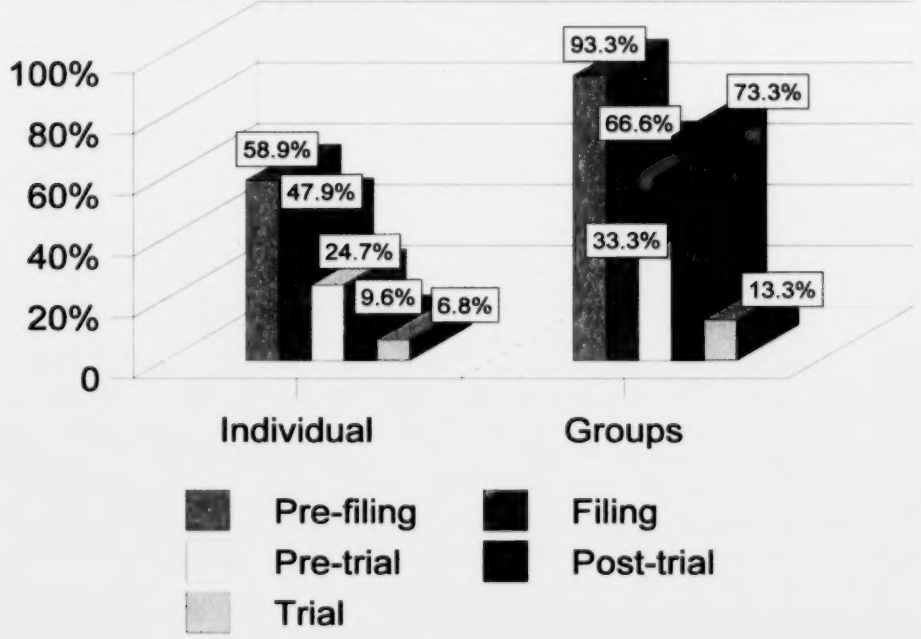
Seventy-three members of court staff, not counting the 11 Registrars of Probate, were interviewed individually and 79 were interviewed in (15) groups, during the fall of 2002. Staff who were interviewed in a group were not interviewed individually. The responses are representative of the entire province from every justice centre (excluding satellite courts). Appendix 11 shows the geographic distribution of interviews, but does not identify by name or position the individuals who participated.

### When are SRL needs the greatest?

Whether interviewed individually or in groups, court staff agreed that (Table A)

- most questions are asked by self-represented litigants at the pre-filing stage[4]
- the fewest questions are asked at the trial stage[5]

**Table A: Stage of Court Process Most Questions Asked**




[4] Fourteen out of 15 focus groups (93.3%) and 43 of the 73 individuals (58.9%) reported that most questions came at this stage of proceedings

[5] Five of 73 individuals interviewed thought most questions came at trial (33.3%) and two of 15 groups (13.3%)

As well, the data shows that whether interviewed individually or in a group, staff agreed that

- pre-filing is the stage when staff are most likely to spend time with a litigant [6]
- filing is the second most time-consuming stage with self-represented litigants[7]

### What is the most important stage for SRLs to receive information?

Of the 73 interviewed individually, there were 106 responses, 55 (52%) of which indicated that the pre-filing stage is the most important information stage for self-represented litigants to receive information. When interviewed in a group setting, there were 26 responses, 13 of them (86.6%) indicating that the pre-filing stage was most important.

The filing stage received the second largest number of votes on this question. Individual interviews resulted in 22 (20.7%) responses, and ten of the 15 groups interviewed (66.6%) thought filing time was an important period at which to give information to the self-represented litigant.

Combining these two stages results in a 72.7% to 88% (individuals, groups) response rate over all five stages, a strong indication that materials prepared for self-represented litigants should focus on these two stages.

The data (individual and group) indicates that the trial stage is the least important one for providing information.[8]

### Who spends the most time with SRLs?

The data shows that depending upon job tasks, time spent with self-represented litigants varies. Front counter staff, family court intake workers, and conciliators spend the most time with self-represented litigants. Individual and group responses are consistent. We noted almost all positions entail some work with self-represented litigants through the day except for court reporters and sheriff officers, who deal with self-represented litigants less often during the day.

In individual interviews the team found the following:

- Some staff commented that it took longer to explain some court procedures than others, with the result that a question about peace bonds, private prosecutions, or the divorce kit could take up to 30 minutes, much longer than the run-of-the-mill question.
- Some staff noted that the time they took greatly depended upon the age and education level of

[6] Thirty-eight of 73 individuals (52%) and 12 of 15 groups (80%) ranked this as the number one time-consuming stage

[7] Thirty-one of 73 individuals (42.5%) and 11 of 15 groups (73.3%) indicated they spend most time with self-represented litigants at this stage

[8] Five of 106 responses (4.7%) from individuals and zero from groups (0%)

the self-represented litigant.

- Some of the conciliator responses took into account a distinction between their normal work and duty-week work.
- Some staff reported that their entire day, or at least 5.5 hours/day, is spent answering self-represented litigant inquiries. These include front counter people, multi-taskers, and conciliators.
- Court reporters mostly reported spending a negligible part of their day with self-represented litigants (between 0-5 minutes).
- The majority of individuals reported they spend between 1.5-2 hours a day with self-represented litigants.
- At least one staff member reported that interaction took less time when staff had a kit to distribute.

Looking at focus groups responses, we found the following:

- Front counter staff at Family Court, Family Division (Supreme Court), Supreme Court (Divorce), and Provincial Court spend much of their daily work hours answering questions from self-represented litigants.
- Probate court staff report an average of 1 hour/day.
- Sheriff Services staff reported an average of 10-30 minutes/day.

### What are the most commonly asked questions?

Staff provided the team with a wide range of most commonly asked questions. These questions centered around process, advice, cost, and timing. See Appendix 9 and 10 for a full list of questions asked at each stage of the process.

Ready, consistent answers to the most commonly asked questions would save court staff time, increase the consistency of answers to these questions across the province, and increase public satisfaction with court services.

There is debate in the research literature about the nature of some questions asked by litigants -- Are people seeking legal advice or legal information?[9] The debate continues in practice and must be addressed locally if court administration is to take on the business of providing information to litigants.

Many court staff were clear about the difference between legal advice and legal information. This was demonstrated by the types of questions some of them believed they did not have the authority to answer. Some staff are not aware they are giving out legal advice. Others suspect that they may be crossing the line between the two, but prefer to err on the side of giving the information they believe will assist the self-represented litigant in their court process, whether it constitutes legal advice or information.

Self-represented litigants do not distinguish between asking for legal information and legal advice. Staff reported that self-represented litigants do not understand when they are told by staff that "they cannot

[9] See for example: "Legal Information vs. Legal Advice - Developments during the last five years" John Grecean, 84 Judicature 198 ( January-February 2001)

answer a particular question because it would be giving legal advice."

Litigants can be informed through easy-to-read signage what to expect and what not to expect from staff at the courts, and staff can be trained to identify the difference between a request for legal information and legal advice and to handle questions for both from self-represented litigants.[10]

### What is the impact of SRLs on court staff?

Collectively, court staff used the following descriptors to tell us about the impact of self-represented litigants on their jobs:

- frustrating
- anxiety
- time consuming
- stressful
- interrupts other work
- sometimes exhausting

Many staff admitted discomfort and/or anxiety relating to

- the sufficiency of their advice
- whether they were going beyond the limits of providing information and getting into giving legal advice

These responses point to a desire for more information and training about the various court processes and for clearer management direction about the types of questions they should and should not answer.

It was interesting to note that many of the court staff clearly view self-represented litigants as their "clients" and feel this is an integral part of their job.

### What is the impact of SRLs on the functioning of the court?

Court staff indicate that court hearings can be both longer and shorter when conducted by self-represented litigants. Some Provincial Court staff indicated that self-represented litigants often do not ask questions or do not take very long when conducting their own cases. They also had stories to tell about long court hearings involving self-represented litigants.

Some responses indicate that a self-represented litigant slows proceedings down by requiring judicial or other intervention for assistance because their behaviour requires monitoring. Longer hearings in Provincial Court affect the cases of the accused waiting in cells, requiring further remands and postponements. Another result is daily dockets that become backed up.

[10]The project team has developed a working draft [Appendix 13] and has received permission from the Iowa State Supreme Court to use their court staff guidelines to create a Nova Scotia version.

Court staff reported delays and interruptions. Delays were reported to be caused by improperly filed documents, witness problems, not booking enough time for a hearing and running out of time before it is concluded, and failure to provide proper notices. Many delays resulted in adjournments. Adjournments were also requested to enable the self-represented litigant to get a lawyer, or to be able to have their lawyer (usually Legal Aid) come to court with them.

Court staff explained that these procedural "failures" resulted in "dead" or "down" time for the court, which means a scheduled hearing does not take place, but no other hearing can be booked in because the "failures" were only made apparent at the court room door. In a court with high volume, this can have significant impact for administrators and for litigants.

### What are greatest frustrations in dealing with SRLs?

The study identified that the most frequent response from both individuals and groups was "can't understand," signifying that this is the greatest staff frustration with a self-represented litigant.[11]

The next most frequent frustration according to the individual interviews was "lack of knowledge."[12] Group interviews indicate "bad attitude" as a second greatest response.[13]

It may be that bad attitude ranked higher in groups because staff were letting the project team know about their frustration with self-represented litigants in these sessions. Individuals talked about their worst experiences and the group adopted these frustrations, adding their own worst cases. Members of the project team observed a "therapeutic" release at quite a few of the group sessions.

Many staff differentiated between "can't understand" and "won't understand." Staff said that often self-represented litigants would not understand a particular response despite their best efforts to explain. Staff sometimes felt the self-represented litigant did not try to understand.

In interviews at the Halifax Family Division, the volume of litigants was expressed as a great frustration. Staff indicated that they do not have enough time to spend with self-represented litigants to work with them individually on specific process concerns.

### What are the biggest mistakes made by SRLs?

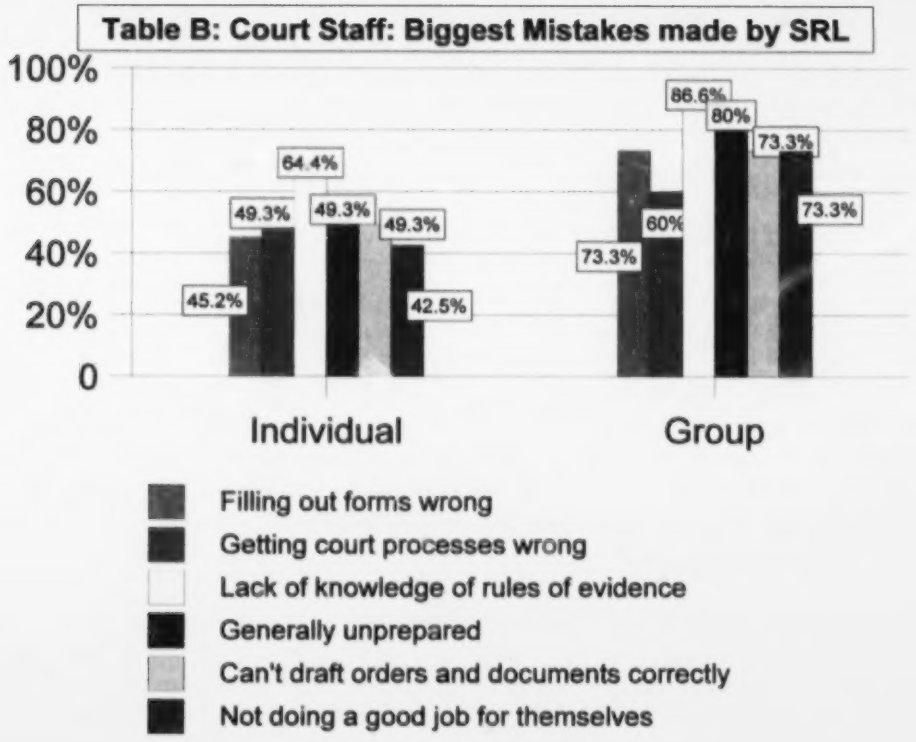
Groups and individuals responded that "lack of knowledge of rules of evidence" was the biggest mistake

[11] Twelve of the 15 groups (80%) and 47 of the 73 individuals (64.4%) interviewed

[12] Forty of the 73 individuals (54.8%)

[13] Eleven of 15 groups (73.3%)

made by self-represented litigants.[14] Next in line is "generally unprepared."[15] From there, the ranking of next "biggest mistakes" differed somewhat. See Table B for a full list of the biggest mistakes.




### What management or information measures do staff use to deal with SRLs?

The main information measures being reported by court staff were referrals, kits, and brochures. Less frequently mentioned references were made about videos, Internet, appointments, and attending court as a rehearsal for the self-represented litigant's own court attendance.

Staff were happy to hear that more printed information about court procedures was being prepared through the Self-Represented Litigant Project. Many of the topics which they suggested were already under development.

[14] Thirteen of 15 (86.6%) groups and 47 of 73 (64.4%) individuals

[15] Twelve of 15 groups (80%) and 36 of 73 (49.3%) individuals

With the help of federal funding, a 24-minute video, *Your Day in Court*, was produced in 2001. The purpose of the video was to assist self-represented litigants prepare for and conduct a hearing in the Supreme Court (Family Division). Copies were distributed to courts and libraries across the province, and it is available on the Internet at <www.gov.ns.ca/justice>.

Many staff noted the usefulness of the Parent Information Program (formerly Parent Education Program). The program is not available at all court sites. Family Division staff noted the mediation program attached to their court. Some staff noted, with appreciation, the training programs available in house.[16]

### What medium do staff prefer to use: print, verbal, or video?

Groups preferred print media over video or verbal exchanges for communicating to self-represented litigants, after discussing the limitations on their own time. It was acknowledged that if there were more staff available to assist SRLs, then handling inquiries face to face was preferable.

Individually, staff also chose print as the preferred medium for providing information to self-represented litigants.[17] Limitations of space or time affected their response. Staff indicated self-represented litigants would best respond to verbal explanations and for this reason would prefer to handle inquiries this way. Some staff suggested using group verbal information sessions such as court orientation sessions for self-represented litigants.

### What suggestions or solutions does court staff have to cope with SRLs?

The study collected numerous suggestions for solutions; all worthy of consideration [See Chapter 6]. Some will come with significant price tags, others require cultivating effective communication and collaboration with other government and non-government departments or agencies and the judiciary.

The results showed that many staff around the province were not aware of the existence of the project. There are likely a variety of reasons for this -- the subject is of little interest to staff members who are not connected with the issue, poor internal communication, and poor promotion by the project team. However, one half of the staff interviewed were aware of the project. Many have shown a high level of interest in the issues that relate to self-represented litigants and their own jobs.

The majority of staff did not have knowledge of resource materials created by the Court Services Division of the Department. For example, it was surprising to hear that some staff in the Family Division courts were not aware of the video. Court Services must keep in touch with the courts and the staff about programs and services being offered to them and court clientele.

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[16]For example, personality typing that helps them deal with self-represented litigants.

[17]Of the 73 interviewed, these are the responses: 22 in favour of print, 18 favour verbal, 16 favour video, two suggested usage of verbal by group

### Does your court facility have room for a self-help centre?

Half of the groups interviewed indicated there was no room for a self-represented litigant information centre. The project team observes that this response also reflected a sense that a service such as this would create more work for them. This is a legitimate concern. The Division must be careful to create programs that provide appropriate resources.

**Recommendation #1:**
**Develop processes and tools to assist staff and self-represented litigants at the pre-filing and filing stages of the court process.**

**Recommendation #2:**
**Train frontline staff in all courts and Family Court intake/Supreme Court (Family Division) conciliators to deal with self-represented litigants. Consider delegating specific staff members to handle self-represented litigant inquiries in high volume justice centres.**

**Recommendation #3:**
**Develop court staff guidelines to increase the consistency of answers from staff to litigants across the province. Differentiate between requests for legal information and legal advice.**

**Recommendation #4:**
**Provide court staff with training when legislation and court procedures change, so that they will be able to inform self-represented litigants of these changes.**

## Chapter 3: Responses from Judges

Forty of the 72 full-time judges in the province participated in the study, representing 55.5% of the judiciary.[18]

Appeal Court judges were not personally interviewed by the project team. They completed the questionnaire in writing.[19] Judges from other courts participated through interviews with one or more members of the project team.

Outside Halifax Regional Municipality, most judges are located in justice centres that hold multiple courts (Supreme, Provincial, Family, Small Claims, Probate) with varying jurisdictions and subject matter concerns. In Halifax Regional Municipality, judges are located with colleagues operating in the same jurisdiction (e.g., Court of Appeal, Supreme Court General Division, Supreme Court Family Division, Halifax Provincial Court, Dartmouth Provincial Court).[20]

With the exception of two common questions, [21]judges were asked a different series of questions than court staff [See Appendix 4, pages 5 and 6]. Registrars of Probate were asked the same questions and some comparative analysis of the data from judges and registrars is contained in Chapter 4.

### Are SRLs generally disadvantaged by the lack of legal representation?

Eighty-seven and a half per cent (35 out of 40) of judges were of the opinion that self-represented litigants are generally disadvantaged by lack of legal representation (Table C). A number of responses indicated that the disadvantage did not necessarily translate into a disadvantage in outcome for the self-

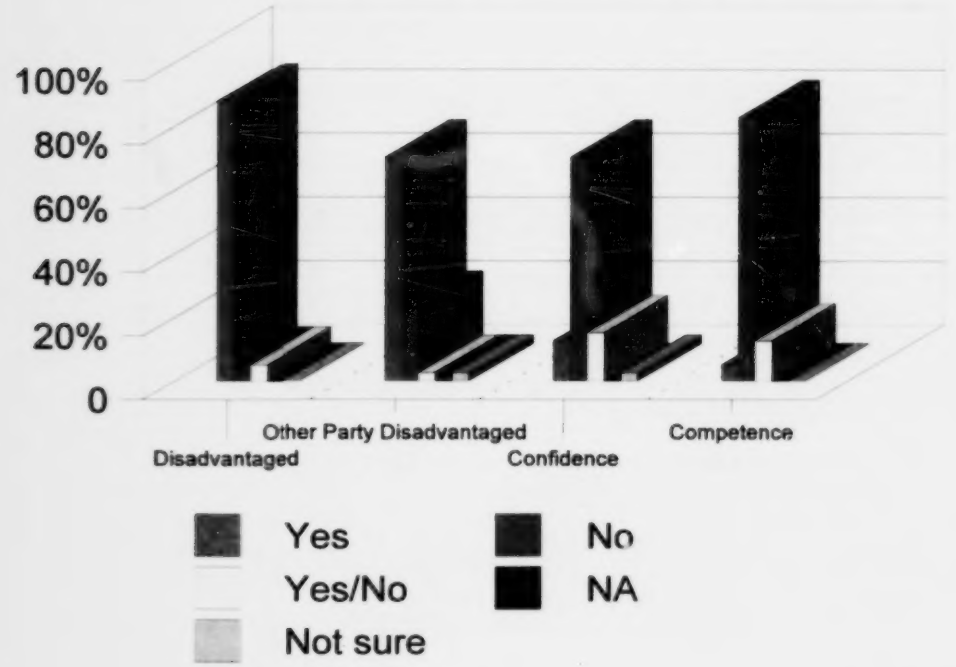
[18] Statistics from <www.courts.ns.ca> indicate the following numbers: Appeal 7, Supreme (General) 22, Supreme (Family)11, Provincial 24, Family 8. The breakdown of judge participation by court is as follows: Appeal 7 (100%), Supreme (General) 12 ( 54.5%), Supreme (Family) 5 (45.4%), Provincial 11 (45.8%), Family 5 (62.5%).

[19] The project team thanks Mr. Justice Thomas Cromwell, a member of the Self-Represented Litigant Project advisory committee, for his kind and effective efforts towards that end.

[20]Twenty-four of the judges who participated in the study are based in the Halifax Regional Municipality and were interviewed in Halifax, and 16 were interviewed in other justice centres. The project team did not analyze the data to see what response differences there may be if they were to be viewed in regional or other geographic grouping, but the data would allow for that type of analysis, were it to be considered useful.

[21] The two questions are: "What are some of the biggest mistakes made by self-represented litigants?" and "Do you have other suggestions or solutions for Court Services to cope with the self-represented litigants and the challenges they create for courts and other areas?"

**Table C: Responses of Judges**




represented litigant. Reasons offered for this observation included a belief that the judiciary compensates for the lack of legal representation by providing research and instruction. In certain courts, for instance the family courts, some of the judiciary indicate that self-represented litigants know the "issues" important to them, though not the rules and procedures of court. One judge suggested that litigants are more aware of the "real issues" at stake, though they do not understand procedures or evidentiary rules.

### Are the other parties generally disadvantaged by the unrepresented party's lack of legal representation?

Well over half the judiciary (70%), were of the opinion that the "other party" is generally disadvantaged by the self-represented litigant's lack of legal representation. Twenty-two and a half per cent were of the opposite opinion.

### Does a SRL participate in the proceedings with confidence?

Seventy per cent of the judiciary (28 of 40) indicated that self-represented litigants generally do not participate in proceedings with confidence, while 12.5% (5 of 40) indicated otherwise. Two and a half per cent (1 of 40) were not sure how to respond. Some judges noted the dilemma for a judge in drawing the line between advocacy for the self-represented litigant and assistance to the self-represented litigant.

Some also noted that the self-represented litigants look to the judge to assist them in presenting their case.

### Does a SRL participate in the proceedings with competence?

Eighty-two and a half per cent of judges surveyed (33 of 40) do not think self-represented litigants participate with competence, giving the following reasons: a lack of knowledge of court processes, legal issues, and rules of evidence, and their charged emotions. Five per cent of the judges (2 of 40) were of the opinion that a self-represented litigant generally participates with competence.

### Would you be assisted if the self-represented litigant had been represented?

All 40 judges responded in the affirmative, indicating a clear preference for legal counsel in the courtroom. The following series of choices were given to assist the judiciary in answering this question, but they were not precluded from adding their own reasons.

| # of Responses | % | Reason |
|---|---|---|
| 34 | 85% | The matter would not have taken as long |
| 34 | 85% | The matter might have been resolved with help from lawyers |
| 33 | 82.5% | Documents would have been better prepared |
| 33 | 82.5% | The self-represented litigant would not have needed help in court procedures |
| 31 | 77.5% | The self-represented litigant was unable to present case, cross-examine, etc. |
| 13 | 32.5% | The self-represented litigant had language or communication difficulties/disabilities |
| 12 | 30% | Other (please specify)[22] |
| 8 | 20% | Fewer documents would have been needed |
| 7 | 17.5% | The matter would not have been resolved so quickly |

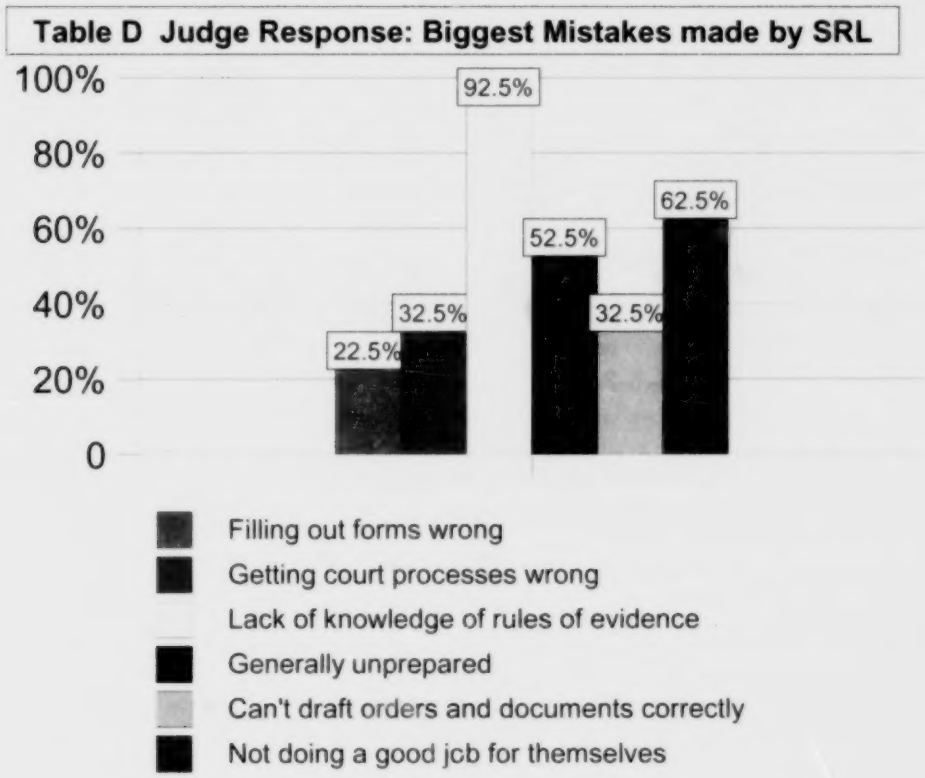
[22] These other reasons included:

- the SRL has difficulty deciding whether to take the stand; SRL does not want to be cross-examined
- SRL would not go to trial if they had legal advice beforehand
- an accused SRL does not understand that they can change the plea after a trial date has been set
- cognitive problems and cultural differences
- lawyer can determine if they should ask for dismissal
- SRL gives up too quickly on giving evidence and don't often settle cases
- legal briefs are rarely prepared by self-represented litigants
- SRL does not know how to deal with evidence

In interviews, the judges expressed concern for the non-traditional role they adopt in self-represented proceedings. The results clearly indicate that judges prefer to have lawyers in the courtroom.

### What are the biggest mistakes made by SRLs?

An overwhelming number of judges (92.5%) selected lack of knowledge of rules of evidence as one of the biggest mistakes made by self-represented litigants in their individual court processes.




### What suggestions or solutions do judges have to cope with SRLs?

The judiciary made many suggestions on ways Court Services could deal with the self-represented litigant and the challenges they create for the courts. These suggestions are discussed in Chapter 6.

## Chapter 4: Responses from Registrars of Probate

There is a Probate Court and Registry of Probate in each justice centre area of the province. All 11 registrars of probate participated in the study.

Registrars were asked a different series of questions than other court staff, due to their combined administrative and quasi-judicial functions.

The following two questions overlapped with the questions posed to the judiciary and other court staff (the comparative analysis of responses is discussed in Chapter 6):

- What are some of the biggest mistakes a self-represented litigant makes in his/her individual court processes?
- Do you have other suggestions for Court Services to cope with the self-represented litigant and the challenges they create for courts and other areas?

The *Probate Act* and its regulations had undergone significant change in the year preceding these interviews, and registrars had participated in training sessions and had helped develop a Q&A brochure and basic self-help kits for beginning the probate process.

With the help of three registrars, the Self-Represented Litigant Project had already produced a guide for the applicant acting without a lawyer called "Dealing with an Estate at Probate Court" and improved checklists for opening an estate were available at the courts at the time of this study. This being said, registrars' sensitivity to questions from self-represented litigants was already established, which was another reason why the project team asked them a different series of questions from regular court staff.

### Are SRLs generally disadvantaged by the lack of legal representation?

Of the 11 registrars, seven (63.6%) held the opinion that self-represented litigants are generally disadvantaged by the lack of legal representation. This is slightly lower than the percentage of judges who strongly believe that self-represented litigants are generally disadvantaged. Two (18.2%) responded that they are not disadvantaged. Two (18.2%) were ambivalent, and answered both "yes" and "no."

Some registrars commented that the system is much more user friendly than it was before the reform, which may have influenced their opinion as to whether or not self-represented litigants are disadvantaged.

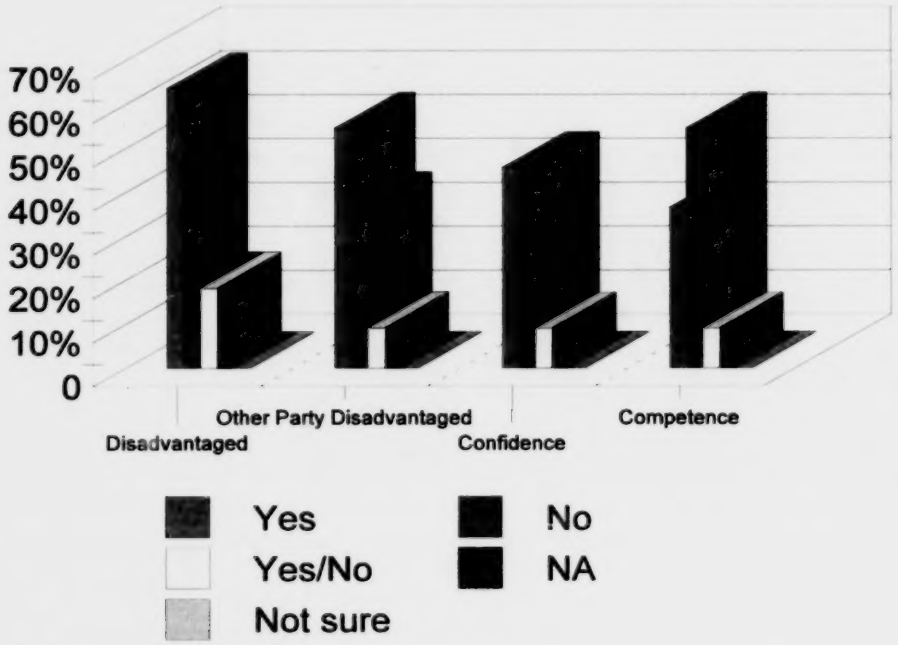
### Are the other parties generally disadvantaged by the unrepresented party's lack of legal representation?

Six registrars (54.5%) were of the opinion that the other parties are disadvantaged by the unrepresented

party's lack of legal representation. Again, this percentage is lower than that indicated by the judges.[23] Four registrars (36.4%) thought that the other parties are not disadvantaged. One (9.1%) was ambivalent, answering "yes" and "no."

The most prevalent comment made by registrars concerned the extra time taken by a self-represented litigant in probate proceedings.

**Table E Responses of Registrars**




## Does a SRL participate in the proceedings with confidence?

Registrars were evenly split when it came to telling us whether or not the self-represented litigant participates with confidence. Their comments included:

- [SRLs] want to do what is right, but not sure what to do
- the kit gives them confidence
- when court starts you can see the confidence fall quickly
- it may be superficial, but they have confidence
- nervousness prevents confidence sometimes

[23] 70% of the surveyed judges indicated that the other party is disadvantaged

One may conclude that confidence is derived from information; when the litigant is dealing with unfamiliar matters, confidence recedes.

In contrast, 70% of the judiciary interviewed indicated that the self-represented litigant does not participate with confidence. This difference may be attributable to the fact that the probate system has up to date self-help materials and staff who generally meet with them to explain the procedures before they participate in a hearing.

### Does a SRL participate in the proceedings with competence?

Again, registrars were fairly evenly split when it came to deciding if self-represented litigants generally participate with competence. Six of the 11 (54.5%) registrars did not believe that they participate with competence, while four felt that generally they do. One was ambivalent, and one chose "no answer." Self-represented litigants were viewed as fairly competent by some registrars because they are knowledgeable about procedures. Other registrars stated that, due to their lack of ability and experience, most self-represented litigants are not competent.

The judges, in comparison, indicated overwhelmingly (82.5%) that self-represented litigants do not participate with competence. This may be due to the fact that judges deal with self-represented litigants on a broad range of issues. Probate registrars deal with self-represented litigant on a single area of law that is arguably, at least procedurally, more straightforward.

It is clear that registrar experiences are different than those of the judiciary as their answers reveal an opinion that self-represented litigants are fairly competent and confident. The project team speculates that this may be due to the fact that, as indicated above, the Probate Court has undergone significant changes and the impact of self-represented litigants in this area of law was taken into consideration throughout that process.

### Would you be assisted if the self-represented litigant had been represented?

Ninety-one per cent of registrars thought that they would be assisted generally if the self-represented litigant had been represented. Read with the results of the previous question, one might ask "why, if self-represented litigants are competent, would a registrar be more comfortable dealing with a lawyer for the litigant?" There may be a strong preference among the registrar community to deal with lawyers rather than self-represented litigants. One hundred per cent of the judges indicated a preference to deal with legal counsel. Only one registrar indicated that they would not be assisted generally if the self-represented litigant had been represented.

The top four ways in which registrars felt they would have been assisted by legal counsel are:

- the matter would not have taken as long (91%)
- the matter might have been resolved with the help of lawyers (72.7%)
- documents would have been better prepared (72.7%)
- the self-represented litigant would not have needed help in court procedures (63.6%)

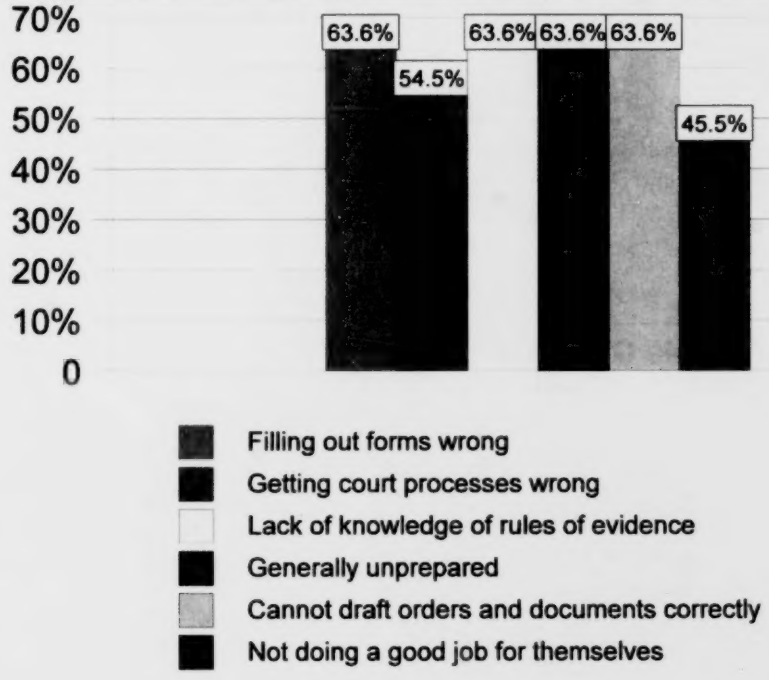
These responses mirrored the responses given by the judiciary.

### What are the biggest mistakes made by SRLs?

Registrars ranked the following mistakes equally as the "biggest" mistakes (7 of 11 or 63.6%):

- filling out forms wrong
- lack of knowledge of rules of evidence
- generally unprepared
- cannot draft orders and documents correctly, like affidavits, etc.

**Table F: Registrars Responses: Biggest Mistakes made by SRL**




### What suggestions or solutions do registrars have to cope with SRLs?

Like other staff, registrars made many suggestions as to how Court Services could cope with the self-represented litigant and the challenges they face. These suggestions are discussed in Chapter 6.

## Chapter 5: Responses from Self-Represented Litigants

This chapter will follow the outline of the questionnaire developed to assess the who, why, what, and how of self-represented litigants. The project team wanted to determine the following:

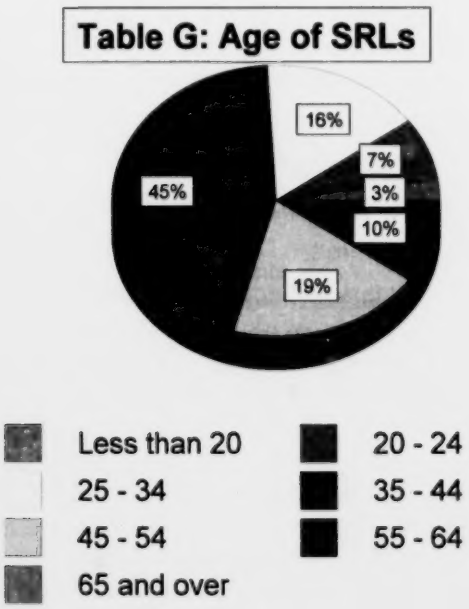
- who self-represented litigants are
- why they come to court without lawyers
- what their needs are
- how they believe the courts might best help them address these needs in the future

Fifty-eight people completed questionnaires. Twenty-seven were received from court sites around the province and 31 came through our Internet-based solicitation.

### Who are they?

#### Age

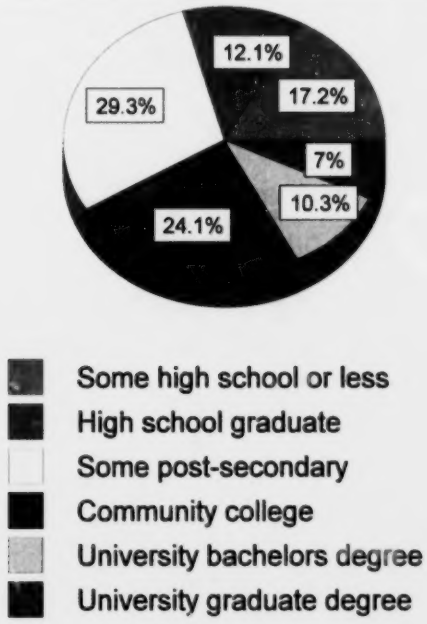
Forty-five per cent of the self-represented litigants were between the ages of 35 and 44 years. Nineteen per cent were between the ages of 45 and 54. These were the two largest groups of respondents, making up 64% of the total.



**Educational accomplishments**

Twenty-nine point three per cent of self-represented litigants had at least some post-secondary education (community college or university). Twenty-four point one per cent were community college graduates. These were the two largest groups of respondents, and comprise 53.4%of the total.

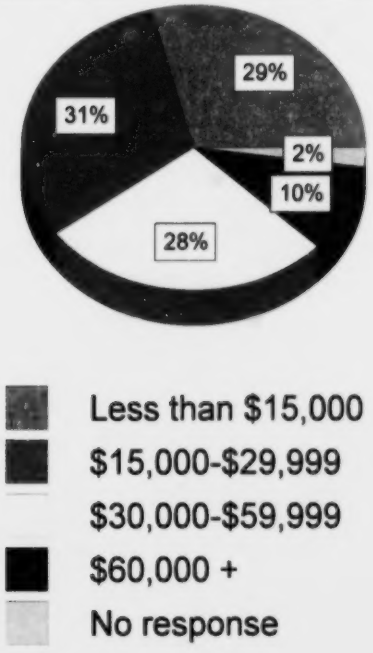
**Table H: Educational Accomplishments of SRLs**




**Income level**

The largest group (31%) had income between $15,000 and $29,999, and the second largest (29%) had income less than $15,000. The total of these two groups, meaning self-represented litigants with less than $30,000 income, represents 60% of the sample group. These findings support earlier anecdotal information.

**Table I: Income Level of SRLs**




**Employment**

The questionnaire asked whether the respondent was a paid worker. Three chose not to answer the question, representing 5.2% of the total. Fifty-three point four per cent (31 persons) of the self-represented litigants were paid workers and 41.4% (24 persons) were not.

**Communication devices**

The project team wanted to explore the best way to communicate with self-represented litigants. Ninety-one per cent of self-represented litigants indicated that they had a telephone, 69% had a personal or home computer, and 71% had both access to the Internet and an email address. Only 59% had a public library card.

**Gender**

Three respondents (5%) did not answer this question. Fifty-five per cent (32) were male and 40% (23) were female.

## Why no lawyer?

### Why self-represented litigants do not have a lawyer?

Respondents were asked to answer the question by making a choice from the following list:

- don't need/want one
- can't afford one
- legal aid denied/not available
- no response

Thirty-nine per cent of the responses indicated that they did not need/want a lawyer. Thirty-three per cent said that they could not afford one, and there was a 26% response rate indicating that legal aid was denied/not available. Only one person did not respond.

### Why don't you need/want a lawyer?

We then asked the respondents who chose "don't need/want one" *why* they didn't need/ want a lawyer, and the results are listed below:

- 21.5% matter is simple/straightforward
- 21.5% can do as good a job for myself
- 41% other reason
- 16% previous bad experience with lawyers

Three themes emerge from these "other reasons":

- the self-represented litigant has been represented before and believes they can do as well for themselves
- they distrust lawyers
- they cannot afford legal representation

We were unable to make definitive analysis concerning what areas of law these litigants were involved in, however, it appears the majority stem from family law cases, and that others were of a criminal or small claims nature.

The project team are aware of other studies being conducted in Canada and elsewhere that are investigating the question of why self-represented litigants are conducting their own court cases.[24] It

[24] Many of these studies explore other issues as well. They are, Canadian Forum on Civil Justice: Civil Justice System and the Public Project; Meeting the Challenge of Pro Se Litigation - 1998 - Goldschmidt - American Judicature Society; Litigants in Person in the Family Court of Australia - 2000 - Family Court of Australia; Research in progress by C. Cameron, University of Melbourne - 'Litigants in Person in Civil Proceedings' Civil Procedure (2001), and 'UK Civil Justice Reform Three Years On - Successes and Failures' Civil Procedure (2001);

would merit following such studies for continuing insights into the question, given that this sampling of responses, valuable for the data and emerging themes, may be too small to be used as the sole foundation upon which to make significant systemic changes.

**Would you feel more confident with a lawyer?**

Three of the respondents answered both "yes" and "no" to this question; four did not respond. Thirty-one answered "yes" and 20 answered "no," meaning that 53% (the majority) of respondents would prefer to have legal representation, and that 3% were ambivalent about their preference. On the other hand, 35% did not want a lawyer. Four per cent did not respond.

What explanation can there be for this response in light of the earlier response that indicated 41% did not need/want a lawyer? Perhaps not "needing/wanting" a lawyer is based on experience and cost, but overall, a self-represented litigant would feel more confident with a lawyer.

**Did you get advice from a lawyer at any stage of your case?**

Thirty-two (55%) of self-represented litigants had received advice from a lawyer, 25 (43%) had not, and one individual (2%) chose not to respond to this question.

**Have you been self-represented at all stages in your court case?**

Fifty-five per cent indicated they have been self-represented at all stages of their court case while 42% indicated they had not. Three per cent did not respond. Upon reflection, the project team believe this question was badly worded. The question asked whether they had been self-represented at all stages in their individual court cases, (seeking a yes or no response) and went on to ask them to report on which stages they had been represented by a lawyer. The second question was not set out separately, but tied it to the "yes" response, and therein lay error. Several self-represented litigants responded, nonetheless.

## What are the needs of self-represented litigants?

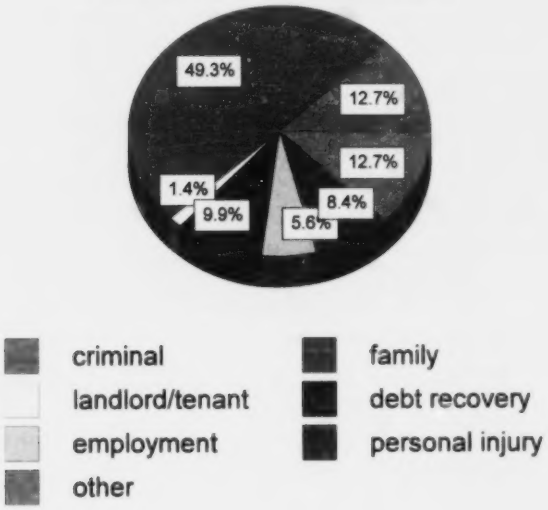
This section sought information on the type of case in which the SRL was involved, the court they were using, the stage of court each was at in their case, and where and what information was obtained.

**What kind of case?**

Respondents were asked to choose from the following list of cases and were allowed to provide another answer, if their case was not described by this list: criminal, family, landlord/tenant, debt recovery, employment, personal injury, and other.

All respondents replied to this question. In total, there were 71 responses from the 58 self-represented litigants, 49.3% of which were family law cases. The next highest area was criminal law, at 12.7%.

**Table J: Type of Case**




**In what court will your case be heard?**

Two individuals did not answer this question. Six indicated that their case would be heard in more than one court. Of those six, it would appear that two involve one case being heard at two levels of court, and four involve more than one case, which results in the appearance at more than one court.

| Table K: Self-Represented Litigant Usage of Nova Scotia Courts | | |
|---|---|---|
| **Court** | **Case Numbers** | % |
| Court of Appeal | 3 | 4.3 |
| Supreme Court (General) | 16 | 22.9 |
| Supreme Court (Family Division) | 15 | 21.4 |
| Family Court | 15 | 21.4 |
| Provincial Court | 10 | 14.3 |
| Small Claims Court | 5 | 7.1 |
| Probate Court | 2 | 2.9 |

| | | |
|---|---|---|
| No Response[25] | 2 | 5.7 |
| Other | 2 | 5.7 |
| Total | 70 | 100% |

**At what stage are you [the self-represented litigant] in your court case?**

Six of the 58 individuals did not answer this question and two were uncertain how to describe their "stage." Two indicated they were at various stages and two said they were "in limbo." The project team had difficulty interpreting the meaning of these descriptions.

The remaining 46 responses are as follows:

| | | |
|---|---|---|
| Beginning | 12 | (26%) |
| Finished | 12 | (26%) |
| Preparing/waiting for trial | 10 | (22%) |
| Preparing/waiting for interim hearing | 4 | (9%) |
| Final stages | 3 | (7%) |
| Discovery | 1 | (2%) |
| Demand for affidavit | 1 | (2%) |
| Middle | 1 | (2%) |
| Beginning appeal | 1 | (2%) |
| Enforcement | 1 | (2%) |

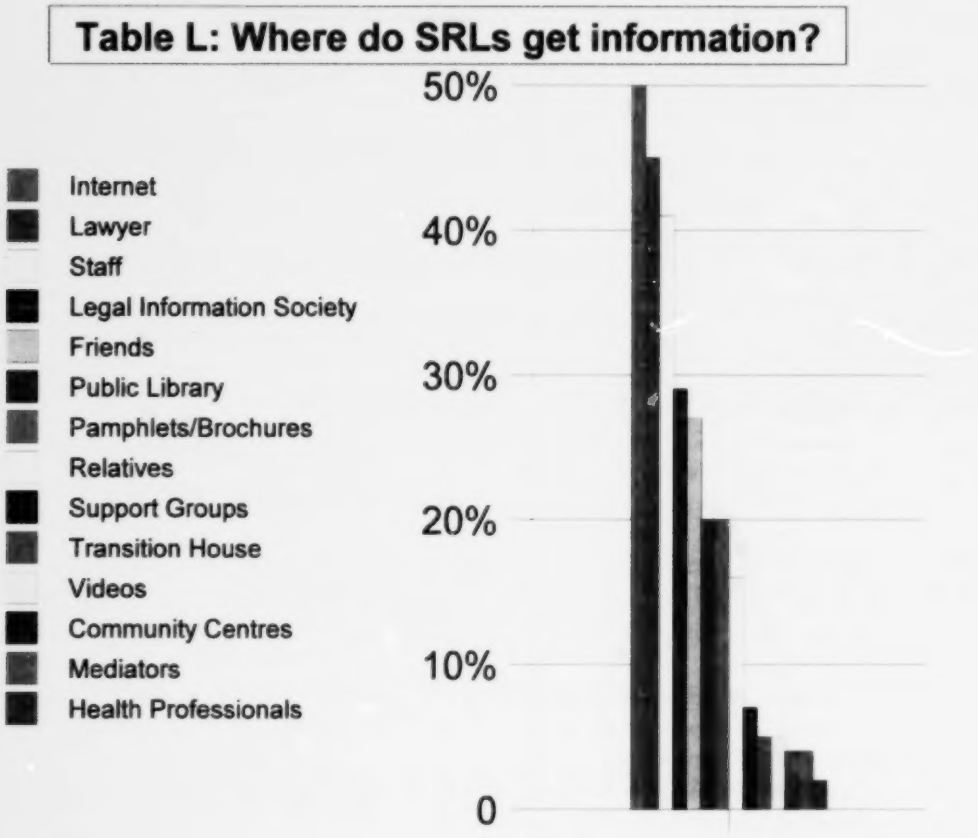
**Where did you get information about the law and court process for your case?**

Multiple choices were allowed for this question and in total the 56 respondents made 153 selections. Fifty per cent of the respondents use the Internet as an information source. The next most used information source is lawyers (45%) and courthouse staff (41%). [26]

What does this suggest for the Court Services Division? If the 56 respondents are a valid sample group of the self-represented litigant population in Nova Scotia, they are most likely to go to the Internet and staff at courthouses for information. Materials which are developed for them should be available on the Internet, at courthouses, at the Legal Information Society of Nova Scotia and libraries. With Internet links, there is no cost to providing this information (only paper copies would cost).

[25] The two 'No Response' and two 'other' court selections were the Alberta Provincial Court, Supreme Court of Canada, one person described a hope for mediation, and another did not describe the 'other' court to which they were referring.

[26] This latter statistic supports our initiative to develop court staff guidelines for the dissemination of information and in doing so to provide court staff with a better understanding of the difference between legal information and legal advice.




**What kind of information did you get?**

Self-represented litigants are looking for and finding information including:

- civil court process (civil procedure rules)
- Appeal Court booklet
- useful telephone numbers
- forms
- precedent forms
- video *Your Day in Court*
- process options
- and substantive law (in case law, Acts, books, pamphlets)

A number of respondents (five) indicated that they gained information from their own experiences in the courts. Some complained that they could not find adequate information.

The responses were generally not descriptive of the area of law for which they were seeking information,

however comparison with the other information given indicates information received related largely to family law.

### How might the courts help you?

**What (if any) additional information would you have found useful to help you to represent yourself?**

Thirty-two of the 58 respondents answered this question. Many responses were given.

The project team believed that seven of the respondents essentially asked for a lawyer by making the following comments:

- on-duty counsel at court offices (1)
- free legal/paralegal consultant at courts (1)
- a coach for use of Civil Procedure Rules, interpretation and application of law, court language, process and dealing with obstructive tactics (1)
- a counseling service to guide/direct self-represented litigants on step-by-step process in court system (1)
- assistance because of a brain injury (1)
- there are too many things that a person needs to know (1)
- an "advocate" for self-represented litigants at the courts to give information. (1)

Others asked for information that already exists:

- Internet access to case law (1)
- access to new statutes (1)
- guide to step-by-step process in court (1) (*Your Day in Court* - at least for Family Division cases)
- what is expected of me in court (2) (covered in part by *Your Day in Court*)

Others asked for mandatory court services that are now discretionary (except for the parent information program in Family Division):

- mandatory mediation (1)
- mandatory programs for parents (to protect kids from mental abuse)

**Did you get help from staff at the court?**

Thirty-four (59%) respondents got help and 21 (36%) felt that they did not receive help.

**What kind of help did you get from staff at the court?**

Thirty-five (60%) of 58 respondents answered this question.

Five of them said they received no help, one said the help was futile, and one said he got the wrong kind of help (was made to change the form he had used, and the subsequent form was later said to be the

wrong one).

Arguably, many of the above may be viewed as more than assistance with procedures; for instance, selecting what forms the self-represented litigant should use, assistance with affidavit content, and instructions on getting disclosure. This, again, speaks to the need for staff to have training and instruction on what assistance they can and cannot give.

There were some very positive comments about court staff concerning the delivery of service (courteous, clear, friendly) and content (prothonotary -- a good source of information when trying to understand process; sheriff very helpful with information).

There were only two negative comments about court staff. In one case, it was about a specific staff member and in another, the self-represented litigant felt that staff did not understand how stressful the litigation process was and did not give pertinent information that the self-represented litigant could have used.

**Did you find the help from court staff useful?**

Forty-three of the 58 respondents replied to this question, 31 (72%) of which indicated that the help was useful and 12 (28%) indicated the opposite. One individual wrote that "they were of great assistance and they deserve to be recognized for going out of their way to help me."

The result is relatively consistent with the data collected in Court Services Client Feedback Project conducted in 2002.[27]

**What more help would you [the self-represented litigant] like to have received?**

We provided 15 choices from which to select responses to this question, one of which permitted original responses. The responses are set out below. Fifty-one (88%) of the 58 respondents replied to this question with a total of 296 responses/choices.

| | | | |
|---|---|---|---|
| ☐ | information on how to present my case in court | 40 | 78% |
| ☐ | information on court process for my case | 33 | 65% |
| ☐ | information on how to fill out court forms | 29 | 57% |
| ☐ | the fees and costs of going to court | 25 | 49% |
| ☐ | the options for resolving disputes out of court | 24 | 47% |
| ☐ | information on appealing court decisions | 24 | 47% |
| ☐ | information on enforcing court orders | 23 | 45% |
| ☐ | definitions of legal words | 22 | 43% |
| ☐ | information on the roles of the people in court | 19 | 37% |
| ☐ | information on how to behave in court | 18 | 35% |
| ☐ | information on complaining about judges or the court | 16 | 31% |

[27] Court Services, CFP, NS Department of Justice, Policy and Planning and Research Division, April 2002

| | | | |
|---|---|---|---|
| ☐ | courthouse/room tours | 11 | 22% |
| ☐ | other | 6 | 12% |
| ☐ | translation or interpretation services (specify which language) | 3 | 6% |
| ☐ | information on how to find lawyers | 3 | 6% |

Once again, if we can assume the respondents form a representative sampling of self-represented litigants in Nova Scotia, this may be a useful list of options from which Court Services Division can select meaningful subject material for assistance to the self-represented litigants and to court administration staff.

## Chapter 6: Comparative Analysis

This chapter looks at the two questions asked of staff, registrars, and judges: "What are some of the biggest mistakes a self-represented litigant makes in his/her individual court processes?"and "Do you have other suggestions or solutions for Court Services to cope with the self-represented litigant and the challenges they create for courts and other areas?

**What are the biggest mistakes made by self-represented litigants?**

The following table illustrates the responses given:

**Table M**

| Mistakes made by self-represented litigants - relative ranking of responses | Staff individuals | Staff group | Registrars | Judges |
|---|---|---|---|---|
| lack of knowledge of rules of evidence | 1 | 1 | 1 | 1 |
| getting court processes wrong | 2 | 4 | 1 | 4 |
| generally unprepared | 2 | 2 | 1 | 3 |
| cannot draft orders and documents like affidavits etc. correctly | 2 | 3 | 1 | 4 |
| filling out forms wrong | 3 | 3 | 2 | 5 |
| not doing a good job for themselves (describe, if other than the reasons above) | 4 | 3 | 3 | 2 |

The following are the project team's observations of this data:

1. "Lack of knowledge of the rules of evidence" is the most often cited mistake made by self-represented litigants. Ninety-two and a half per cent of the judges surveyed indicated that it was the biggest mistake. Registrars were as concerned about three other mistakes (filling out forms, general unpreparedness, and drafting orders and documents). Lack of knowledge of rules of evidence was a bigger concern to staff than any of the other "suggested" mistakes made by self-represented litigants.[28]

2. "Getting the process wrong" is a larger concern for staff and registrars than it is for the judges. Is this because process concerns are largely handled by staff rather than the judiciary? Is it less a concern for the judiciary because of their ability to overlook procedural inadequacies? The data doesn't provide answers to these questions, but perhaps it suggests that process concerns for Court Services, if any are to be established, should be addressed through services and or programs managed by staff at the pre-trial

[28] Forty-seven of 73 individually interviewed (64.4%) and 13 of 15 groups (86.6%).

stages of interaction with self-represented litigants.

3. "General unpreparedness" of self-represented litigants is also a larger concern for staff and registrars than for judges. Thirty-six of 73 individual staff, 12 of the 15 groups, and seven of the 11 registrars indicated that it was a greatest mistake. This response rate means it is a first or second selection as a greatest mistake for these groups. For the judges, it was the third most popular choice of greatest mistake.

4. "Filling out forms incorrectly" was the least of concerns for the judiciary. Registrars of probate ranked it among the biggest mistakes equally with "lack of knowledge," "rules generally unprepared," and "can't draft." For court staff, it was not viewed as the biggest mistake. Individual responses place it as a third concern, lower than "lack of evidentiary knowledge," "getting processes wrong," "general unpreparedness," "can't draft documents." Interestingly, court staff interviewed in groups also demonstrated that it is a third concern, less than "lack of evidentiary knowledge" and "general unpreparedness" and equally with "can't draft" and "not doing a good job."

Staff and registrar responses to the question had a total spread of between 18% to 27% which, to the project team, means that all the listed mistakes were roughly in the same level of concern. The range of responses from the judiciary was 70%, which is much wider, and to the project team emphasizes the strength of their belief that the mistake identified by 92.5% of them -- lack of knowledge of evidentiary rules – is the greatest challenge being brought to court by the self-represented litigant, and that their least concern -- mistakes in filling out forms -- may be effectively dealt with in the earlier stages of interaction with self-represented litigants.

Indeed, the relative lack of judicial concern about mistakes made in filling out forms may result from staff intervention at earlier stages, and from their ability to exercise discretion to minimize the seriousness of such mistakes in individual cases.

5. "Not doing a good job for themselves" received the smallest amount of response from individually interviewed court staff and registrars in comparison to the other choices,[29] but the second highest from the judiciary. In groups, court staff grouped it with "can't draft" and "filling out forms wrong" as a 3rd concern. These results prevent the project team from drawing any conclusions on this subject, except to review the comments made by respondents who chose this as a "biggest mistake."

In summary, court staff are telling us that self-represented litigants are not doing a good job for themselves because they do not have the education and knowledge of lawyers.

They describe it variously as misunderstanding laws and the court system, inability to articulate, and having no idea of what they are doing. Other concerns relate to personal limitations of some self-represented litigants, in lifestyle and education, and include a concern that court staff are blamed by self-represented litigants when they realize that they have not done a good job representing themselves in the

[29] 42.5% and 45.5% respectively

courts. Data from the registrars adds little to this analysis, except for one observation that self-represented litigants tend to personalize everything and lose sight of the real issues.

The comments from the judiciary on this selection, whose data, as noted above, indicate a strong concern that self-represented litigants are not doing a good job for themselves are along the same lines as comments from staff and registrars. However, because they provided more data and had a higher response rate than the other respondents on this selection, a sampling of their comments is usefully read as a description of the ways in which self-represented litigants "get it wrong." Conversely, these may be viewed as ways in which lawyers assist the court in their work before the courts.

What follows is a paraphrasing and summary of some of their comments about self-represented litigants:

- they do not understand the relevant law and are unable to focus the evidence and argument on the key legal issues and do pursue irrelevancies
- they get flustered, lose confidence and focus
- they generally just don't know "how to" and "what to" say
- they lack objectivity in assessing the merit of their cases

More specifically:

- affidavits contain hearsay, double hearsay, inflammatory opinion
- they bring too many witnesses or not enough and don't know how to use them
- they don't know to apply for interim hearings
- in criminal matters they are unaware of their right to information and discussion with the Crown prosecutor
- they don't understand the difference between argument and evidence
- they incriminate themselves by talking too much during trial
- they don't understand that an appeal is not a re-hearing of the trial

**Do you [staff, registrars, judges, and self-represented litigants] have other suggestions or solutions for Court Services to cope with the self-represented litigants and the challenges they create for courts and other areas?**

The project team reviewed responses to this question to see how they compared and whether common threads existed. We wanted to make recommendations for program and physical needs at court sites based on information from these targeted stakeholders. The project team, not the respondents divided the responses into the categories set out in bold below.

**Print Information:**

Staff, registrars, and the judiciary suggested using plain language and simplifying (making more "user-friendly") existing forms. They also suggested improving existing information "kits" that are in use at the courts. Registrars and judiciary suggested that precedent (filled-in) forms be made available. Staff made suggestions that the project team supports as relatively simple and cost effective. These include making information on court fees and costs easily accessible to litigants, improving telephone book listings for courts, and improving justice centre building signage.

The self-represented litigant responses on this subject support the suggestions for simplified forms and

availability of precedent forms. They also want an explanation of court process for their case, and to know the cost and fees of going to court,[30] which the team takes as support for improvement and further development of forms and kits and greater accessability of cost and fee information.

The project team encourages the Department of Justice to consult with the Legal Information Society of Nova Scotia and Communications NS, and other known local legal information providers before developing SRL information material. This will inform and avoid the possibility of duplication, to clarify the Department of Justice position on information development priorities, and to make the best choices for self-represented litigants in Nova Scotia.

**Internet:**

Not as many suggestions were received from staff, registrars, and the judiciary on the subject of the Internet. In fact, registrars were silent on this and on videos. One member of the judiciary suggested that more information be available on the Internet. The team believes this is both easily accomplished and sensible, given that the sample group of self-represented litigants use the Internet more than any other information source.[31] Staff suggested adding forms to the Internet. Responses from self-represented litigants support these suggestions.

**Videos:**

There was encouragement to better promote *Your Day in Court* from staff and the judiciary, and a common suggestion to make more of them. There were many suggestions from the judiciary for the content of such videos, many if not all of which relate to procedural subject matter. This suggestion is also strongly supported by responses from the sample group of self-represented litigants. Seventy-eight per cent of the 51 self-represented litigants who answered the question wanted information on how to present their case in court.

**Programs:**

Staff and judges suggested spreading mediation services across the province. [32] Both also suggested creating court preparation programs for self-represented litigants which would help them prepare for court. A court orientation program was also suggested which would provide self-represented litigants with an overview of the way cases progress through the system. It was suggested that we look at the orientation program which has been developed by the Victim Services Division of the Department and adjust it for self-represented litigants.

Staff, judges, and registrars suggested putting on information sessions relating to various topics for self-

[30] These were the 2nd and 4th ranked responses to question #21.

[31] Table L

[32] The project team did not elicit information that would identify whether this is for the family courts or all courts.

represented litigants. Some suggested that members of the bar, acting *pro bono*, would be of great assistance in such an endeavour. Staff and registrars suggested establishing a toll-free hotline for specific information assistance.

The data from self-represented litigants indicates that what they want most is information on court processes for their respective cases and how to present their cases in the courtroom.[33] There was also a high level of need expressed for options for resolving disputes out of court and information on the roles of the people in the courtroom and how to behave in court.[34] All of these could be addressed by orientation and court preparation programs, whether in person, on video, or a combination of both, backed up by a written manual, such as the one provided by the Victim Services program and/or the Self-Represented Litigant Project Internet brochure "Tips for Representing Yourself in Court." Interestingly, the self-represented litigant sample group was not as interested in courthouse/room tours as they were in the other information noted above.[35]

Some judges made program suggestions specific to family court topics; for instance, conciliation should only take place after the litigants indicate that they will not settle, reading lists of parent education topics be prepared and made available, there must be conciliation/mediation before going into court and the conciliation process be further examined to increase its effectiveness.

**Staff:**

Suggestions for changes relating to staffing at the courts elicited many common responses. Some are likely to carry large price tags, others may be less costly. The project team anticipates that a cost analysis for solutions and services recommended in this report will be addressed by departmental administrators.

In each of the groups (staff, registrars, and judiciary), it was suggested that additional staff be hired and delegated to handle the self-represented litigant population on a one-on-one basis. They gave various examples of how these staffers would be useful. These include greeting and handling questions, help with filling in forms, help issuing subpoenas and, general court preparation assistance. Some members of the judiciary suggested hiring paralegals for such work. Some staff suggested hiring a staff lawyer to handle legal advice requests.

There were inquiries from staff and judges concerning staffing issues at the family law courts on re-shaping the use made of the intake system and conciliators. The suggestions took the form of requests for a further examination of the way in which self-represented litigants are triaged in these courts, and whether conciliators could be used for some pre-trial matters. Suggestions were made by judges that Court Services look into using conciliators in the way other jurisdictions use "masters" -- to hold organizational pre-trial conferences, hear uncontested child protection issues, and other matters.

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[33] These received the 1st and 2nd highest response rates in our questionnaire.

[34] Chapter 5 where it lists the 15 choices by popularity

[35] Thirty-one per cent of the sample group selected this choice as an information need

The self-represented litigant sample group indicated a fairly high level of satisfaction with court staff.[36] We did not ask self-represented litigants for suggestions about improving staffing issues.

**Physical Layout:**

Physical layout suggestions for courts ranged from the simple to grand. Some registrars asked for quiet space. Judges and staff both suggested providing computer access to self-represented litigants at court centres and both suggested creating separate spaces for self-represented litigants to get more information about their court concerns. Some suggested information centres at courts, which could be staffed at known hours and where information sessions could take place. Their visions included televisions/VCRs and space for self-represented litigants to fill in forms, watch videos, and get access to the Internet. Others suggested using information kiosks that would have monitors equipped with interactive programs for filling in forms.

One staff member suggested making space at the courts for special cubicles where self-represented litigants would be able to meet with staff for information. Others suggested providing small rooms for private conferencing. There were suggestions that there be more than one waiting room at each court site, so that the adversarial parties to any case could wait for their hearing undisturbed by the other one. There was a suggestion that waiting rooms have child friendly areas, and that appropriate culturally-diverse posters/art hang on the walls to make all litigants as comfortable as possible. A staff member suggested placing information racks outside court rooms and in the satellite courts. Clearer signage to better direct the public to the correct area of the courthouse was also suggested.

**Court Process:**

Solutions directed at improving the court process came mainly from the judiciary. Staff suggested holding separate sittings for self-represented litigants, improving the letterhead, and clearing the present backlog. Although none of these suggestions were addressed by judges, they did have other suggestions aimed at clearing backlogs. Another suggestion, aimed at the Truro courts, was to provide for night court, with justices of the peace presiding, to free up daytime court for more "serious" matters.

There were concerns that judges find out too late that there will be a self-represented litigant in a matter, which reduces the efficiency of matters in the courtroom and creates administrative problems (taking so long that other scheduled cases can not be heard, sometimes resulting in other accused being transported from correctional facilities to court houses unnecessarily).

One judge suggested that proceedings involving self-represented litigants not take place until all file documentation has been received and reviewed.

**Legal Aid:**

Many staff and judges gave the opinion that the Legal Aid budget should be increased to allow for more lawyers in the system. They ranged from increasing the payments to the Legal Aid Commission through

[36] Seventy-two per cent indicated that the help they got from staff was useful.

increasing the hourly rate paid on legal aid certificates to hiring more legal aid lawyers. Others suggested widening the eligibility for legal aid by decreasing the financial eligibility rules and broadening the areas of law covered by legal aid to poverty issues peripheral to criminal and family law. There was a suggestion from staff to make parental income a factor in legal aid eligibility for youth.

**Duty Counsel:**

There were interesting suggestions for implementing duty counsel. These included expanding duty counsel through Legal Aid for tasks like teaching litigants how to start and organize a defence, to explore resolution with the Crown, to advise litigants on pre-court issues, and help prepare affidavits, and to assist litigants with family court emergencies. [37]

**Pro bono work:**

It was suggested that lawyers be asked for an increased commitment to *pro bono* work, and to set up legal advice clinics or a legal advice roster for limited time or task advice to a self-represented litigant. Such a roster might be available to the judiciary, to allow for lawyers to help self-represented litigants with more discrete courtroom based tasks such as jury selection, and cross-examination of victim in domestic violence cases. One member of the judiciary made a suggestion that lawyers could provide court preparation clinics for self-represented litigants, funded by community service groups and supported by government.

**Other agencies:**

The project team was able to discern seven suggestions relating to other agencies, and each group (staff, registrars, judiciary) spoke about the desirability of getting court process based legal information into offices that are likely to be involved with self-represented litigants. Social assistance offices, community services offices, transition houses, libraries, community centres, the Justice of the Peace Centre, police stations, legal aid offices, related government departments and agencies, were all mentioned as suitable sites for the information.

**Other:**

Other suggestions included increasing the number of probation officers around the province, assisting policing agencies with understanding the process for laying a private information for peace bond application (this suggestion came from staff and judges both), re-thinking the relationship between social assistance staff and the court process for spousal and child support applications, promoting the lawyer referral service offered through Legal Information Society [Appendix 12] of Nova Scotia, proposing short topical information spots to television media, and suggesting that the bar admission course for lawyers improve the preparedness of new lawyers for litigation practice in the Supreme Court (Family Division).

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[37] In the period after conducting interviews, while writing this report, a Legal Aid lawyer has been assigned as duty counsel in the Halifax site of the Supreme Court (Family Division).

**Recommendation #5:**
**Prepare signage for court administration offices that outlines the difference between legal advice and legal information.**

**Recommendation #6:**
**Increase use of video *Your Day in Court* in the following ways:**

- **Make more use of video in the courts and consider making it available through associated organizations (governmental and non-governmental).**
- **Encourage all staff to view the video *Your Day in Court*, not just those operating in the family law area.**
- **Consider running the video *Your Day in Court* in waiting rooms, where suitable.**
- **Consider recommending the video *Your Day in Court* for viewing by non-family civil litigants.**

**Recommendation #7:**
**Compile a list of useful web-related information on court processes and services and make it available in print form at court sites.**

**Recommendation #8:**
**In terms of programs, consider province-wide availability of the Parent Information Program and Mediation. In the areas where these programs already exist, consider ways to promote these programs.**

**Recommendation #9:**
**In terms of resource allocation for materials development, pamphlets and brochures are better choices than videos . Print information for self-represented litigants should be made available on the Internet. When developing print information, keep in mind the following: use plain language, simplify existing forms and make them user friendly (fill-in forms), improve kits that are currently available, make precedent forms and information on costs and fees accessible to litigants.**

**Recommendation #10:**
**Develop the following information guides:**

- **court fees**
- **court room preparation (using exhibits, how to get disclosure, serving subpoenas, dealing with witnesses, requesting adjournments)**
- **improved family law kits**
- **options for resolving disputes out of court**
- **enforcing court orders and appealing court decisions**

**Recommendation #11:**
**Promote the Self-Represented Litigant Project and resource materials to staff including "Tips for Representing Yourself" which is available on the Internet.**

**Recommendation #12:**
**Develop programs that assist self-represented litigants in document and court preparation in collaboration with the Nova Scotia Barristers' Society and other legal services or information providers including Legal Information Society of Nova Scotia, libraries, Transition Houses and Community Centres.**

**Recommendation #13:**
**Provide public computer access terminals at courts and separate space in court facilities where self-represented litigants can get information about their court concerns. Develop information kiosks as part of public computer access which contain interactive programs for filling in forms.**

**Recommendation #14:**
**The immediate creation of any materials in terms of brochures or videos should first focus on family and criminal courts.**

**Recommendation #15:**
**Collaborate with the Bar and Bench to develop a program to deliver court preparative advice/information from lawyers or paralegals in high self-represented litigant volume courts. Support efforts to make legal advice available to (otherwise) self-represented litigants through *pro-bono* initiatives.**

## Chapter 7: Observation of Court Hearings

The project team developed and used the guide found in Appendix 8 to enhance the team's appreciation of the issues and experiences of the self-represented litigant in the courtroom and to try to measure more qualitatively the challenges facing a self-represented litigant. The guide was a tool to focus and attempt consistency of observation.[38] A summary of the project team's observations can be found in Appendix 14.

Time and resource limitations inhibited the research efforts on this aspect of the study. In addition, the project team developed concerns about the amount of subjective analysis built into this guide. Nevertheless, the results of this aspect of the study are valuable as an insight to the self-represented litigant experiences in the courtrooms across the province.

Twenty hearings were observed. Ten involved a single self-represented litigant party and 10 involved matters where both parties were self-represented litigants. The project team observed many other hearings which took one minute or less and these we did not add to the analysis. The hearings observed for this report ranged in duration from just a few minutes to one case that lasted two days.

Of the 20 hearings, 13 were observed by both project team members and seven by just one team member. One member of the project team had practiced law before the family courts for many years and was able to provide background and other procedural information during team observations.

The hearings were observed in different levels of court: 11 hearings were observed in the Supreme Court (Family Division), four family matters were observed in the Supreme Court (in the districts where Family Division is not yet in place), three in the Family Court, one estate matter in Supreme Court, and one criminal matter in the Provincial Court. The vast majority of the hearings observed were family- related matters, mainly because those were the cases that included a self-represented litigant being heard by the courts during our visit to the respective justice centres.

The project team sought and was given permission by the judiciary to observe proceedings. Officially, permission was only required in Family Court, which is a closed court. There was no observable indication that the presence of project members affected or intruded on the proceedings. In some instances, there were others in the courtroom so our presence went unnoticed.

Every effort was made to record observations as objectively as possible. The observation guide found in Appendix 8 used quantifiable measures for recording observations, where possible. For example, to measure the confidence and competence level of a self-represented litigant, the indicators of low, middle, or high were used. To measure the demeanor of the self-represented litigant, the project team selected from pre-approved indicators, such as dressed appropriately/inappropriately, respectful/disrespectful,

[38] It was modeled after a similar guide developed by a research team in Australia for the Family Court of Australia, for which we are grateful. Litigants in Person in the Family Court of Australia: Dewar, Smith, Banks, A report to the Family Court of Australia, Research Report No.20, 2000

articulate/difficulty verbalizing, aggressive/compliant, and attentive/distracted. To assess the reactions between groups, indicators of positive/negative body language and verbal attitude were used as measures.

The project team sat together during the first 13 hearings to ensure we were using the measures in the same manner in an effort to maintain consistency in the observations. It is inevitable that subjective elements arise during such data collection and to that extent the results are a less accurate representation of the Nova Scotian self-represented litigants' court room experience than they are our synopsis of these 20 observations. The observations did provide the opportunity to gain insight into the challenges created for the court and counsel when a self-represented litigant is appearing at the hearing and are useful for that reason.

## Interaction of Parties

The apparent confidence and competence level of each self-represented litigant observed was rated either low, medium, or high. Generally, the self-represented litigants were found to have a medium level of confidence. Self-represented litigants attempted to put their case forward and answered questions when asked. Most spoke fairly clearly and asked questions of the judge when unsure about procedures. Not one was rated low in the confidence category. Those rated high did so because they were articulate, well-spoken, made relevant points, and were clear and calm in their presentation.

Self-represented litigants were assessed by the team to have a medium level of competence. Most self-represented litigants understood the judge's questions, were knowledgeable about the facts of their case, and provided paperwork. There were a few self-represented litigants who rated low in this category as it was clear they did not understand what was happening in court. As well, a few rated high in this category. Those that rated high came to court prepared, had some knowledge of relevant laws, and were articulate in ensuring that the relevant issues were advanced to the court.

The interaction between self-represented litigants, between self-represented litigants and lawyers and between self-represented litigants and judges was also observed during the court hearings. Some self-represented litigants were cordial to one another; however, we noted the tension when both parties were unrepresented. The tension was observed in the form of body and verbal language. Self-represented litigants would most often not look at or acknowledge one another, and when they did speak to the other, it was often harshly. We particularly noted this tension occurring more often during family law cases, observable as raised voices, speaking unkindly to each other, and accusing the other of acting unfairly.

Most lawyers observed treated self-represented litigants as they would another lawyer, and most were helpful. The lawyers tended to speak to the judge directly. In only one hearing did we observe a lawyer become agitated towards a self-represented litigant. In that case, the self-represented litigant continually interrupted the proceedings by speaking out of turn, which resulted in the lawyer commenting to the judge that the interruptions were unnecessary. Most self-represented litigants addressed lawyers in the same manner as they did the judge. In our observations, most self-represented litigants did not make contact with the lawyer directly before or after the hearing unless spoken to first by the lawyer.

In terms of the self-represented litigants reaction to the judge, most self-represented litigants were open, respectful, and cooperative when speaking with the judge. It was clear, especially in the family cases, that the self-represented litigant wanted the judge to hear their side of the story. In some cases, it appeared the self-represented litigant did not understand what the judge was saying. In only a few instances did a self-represented litigant speak while a judge was speaking.

All the judges observed were very helpful, explained procedures carefully, and allowed the self-represented litigant an opportunity to ask questions. Often judges explained the law in language that the project team felt was clear and plain and clarified for the self-represented litigant what was meant by certain legal terms. Often the judge acted as an arbitrator, especially in family matters when both parties were unrepresented. Judges helped manage procedure and substance and summarized what was resolved at the end of the hearing when oral testimony was given. It was necessary for the judges to ask self-represented litigants if they wanted to take the stand and to explain the difference between asking questions and cross-examining witnesses. As well, judges had to explain what was meant by legal issues being relevant to the case as self-represented litigants wanted to talk about issues that were not relevant to the case.

The majority of self-represented litigants observed had difficulties in presenting their cases. Self-represented litigants were unsure of court procedure, and they did not cite law in presenting their case. During one case it became obvious that the self-represented litigant parties (both unrepresented) erroneously believed that a particular statute applied to their case. They had based their court application on this erroneous presumption and were told that it was wrong in law and that they would have to redo their court application using correct and relevant legal foundation.

Most self-represented litigants did not come to court prepared with the appropriate documents. Most self-represented litigants did come to court prepared to address an issue that was affecting their lives. For example, in some of the family law cases it was observed from their presentation to the judge that they had thought about how matters were affecting their children. In our observations, they had focused on their facts and feelings but not on traditional court preparation in providing evidence and cross-examining witnesses.

The two main areas in which the team observed that self-represented litigants had difficulties were providing evidence and cross-examining witnesses. Self-represented litigants did not understand that if they were the one bringing the application they had to provide some evidence. They had little or no understanding of how to present documentation, use witnesses, or lead their own evidence to make their case. Cross-examining witnesses also proved to be difficult for self-represented litigants. Most did not use prepared questions and usually ended up arguing with the witness instead of asking them questions.

## Judicial Style

It was observed that most often judges used simple rather than formal language. Judges asked straightforward questions to determine the facts of the case. It appeared that most judges took an independent, yet facilitative, approach. Judges helped the parties negotiate when both parties were self-represented. They asked clear questions of both parties and gave the self-represented litigants the

opportunity to answer them. The judge's demeanor was observed to be very helpful and patient during the proceedings, yet firm when appropriate.

### Court Etiquette

It was clear from our observations that most self-represented litigants have no knowledge of court etiquette. Self-represented litigants were unsure where to sit and did not know if they were to sit or stand when speaking to the judge. Self-represented litigants did not know how to address the judge (Your Honour, Your Worship, Sir, Judge, Justice, etc.).

### Language and Culture and Special Needs

We did not have the opportunity to observe many hearings where English was not the first spoken language of the self-represented litigant. However, there were technical language barriers between those trained in the law and those who were not. Most self-represented litigants did not understand the legal terms used by the judges or the lawyers. These terms had to be explained. It was observed that most self-represented litigants could read the material presented in court and could respond to questions asked of them.

Only one case was observed where the self-represented litigant's first language was not English. This did require special efforts from the judge to ensure the self-represented litigant parties understood what was the effect of the results of the proceedings.

We did not have the opportunity to observe any hearings involving cultural concerns or special needs.

### Final Observations

The project team's observations demonstrate the challenge of the self-represented litigant during hearings. Extra time must be allowed for explanations that would not normally be necessary if both parties were represented. The judicial style which we observed was helpful and facilitative. It was observed that it is more challenging to manage proceedings when only one party is unrepresented. Ironically, it may be easier to adjudicate where both parties are unrepresented.

# Chapter 8: Court Facility Assessment

A facility assessment was undertaken at each justice centre, using a guide developed by the project team. The guide can be found in Appendix 7. We wanted to know what use was being made of pamphlet information available to the public, what facilities existed for litigants while waiting to address their matter with the court administration staff and while waiting for their court hearing, and what space there might be for an information centre at each court site.

The project team took note of the number of available waiting rooms and equipment provided, the location, contents, size, and suitability of the information racks and whether there was adequate space for an information centre.

The project team created a chart to summarize and highlight the information we gathered. It can be found at Appendix 15.

## Waiting Rooms and Equipment

Most justice centres do not have separate waiting rooms for litigants (and counsel) awaiting their court hearing. Wooden benches and/or chairs outside the courtrooms or just at the entrance are a more typical sight. In most justice centres, both parties must wait in the same area, increasing tensions in cases that may be already inflamed by actions of one or both parties.

When available, waiting rooms are typically quite small. Perhaps this is due to the age of the facility. According to staff, many justice centres do not have enough separate interview rooms to accommodate the current needs of litigants and counsel.

Only a small number of justice centres have installed vending machines in their waiting areas. A few had small tables, chairs, and toys for children in a waiting area. Some waiting areas contained magazines (current and old), likely donated by court staff. Some waiting areas had posters or pictures hanging on the walls.

## Information Racks

**Location -** Nearly all of the justice centres have a pine, stand-alone, plexiglass information rack on wheels. They are located in various places including the main lobby area of the facility, in the court administration office, and outside the courtrooms. In one centre, the information rack was found in the maintenance closet. (The project team was told that it was originally located in the lobby but the brochures kept blowing away when the main doors were opened.) A few centres had additional information racks of varying sizes and shapes set up in waiting areas.

The project team found that some information racks were not placed in areas where litigants would be spending their time at the facility, making them difficult to find. We observed that racks were not always placed in the most appropriate place for the public. Some were low and could be accessed by children. Others were located in atypical view paths; for example, one rack was placed on the top of a filing cabinet. In some justice centres, staff expressed concerns about theft of items not firmly attached to the

building's structure as a reason for keeping the racks away from the litigants.

**Contents** - Most racks contained brochures produced by the Legal Information Society of Nova Scotia (formerly Public Legal Education), the Maintenance Enforcement Program (MEP), the Victim Services Division of the Department of Justice, child support brochures, and the Small Claims Court booklet. Other commonly viewed information were a sheet on restitution in criminal code matters, brochures on peace bonds, transition houses, abuse, family violence, and civil weddings.

At certain sites, there were localized brochures for available services; for instance, Halifax Provincial Court had pamphlets for Coverdale Services, Sydney had brochures for the local Elizabeth Fry Society, and Port Hawkesbury provided a list of directory services for the town.

Some information racks contained no brochures or were not very well stocked. There was no consistency in what was displayed at each justice centre. Staff in some centres noted concerns relating to materials being removed in bulk from information racks.

Court Services, with input from the Self-represented Litigant Project, has created a distribution system for pamphlets in justice centres. A contact person has been appointed in each justice centre to maintain the information racks and keep them up to date. A designated employee at head office has been tasked to provide a list of all available brochures and to coordinate and distribute pamphlets.

**Size and Suitability** - The pine, stand-alone, plexiglass information rack that we found in all justice centres is adequate in size for folded brochures, but it does not hold 8 ½ by 11" brochures very well (the paper is larger and tends to flop over). Most of the Self-Represented Litigant Project brochures developed to date are of that size, as are some others.

## Space for Information Racks

In the smaller justice centre buildings, there is no space for additional information racks, and the ones that are in place are adequate. The larger justice centre buildings could use more information racks as more materials are made available. The larger justice centres could make information racks available in each of the various waiting areas.

## Space for Information Centre

The project team observed that in many justice centres there may be room for an information centre by using unused office space or by making room with existing space. In some justice centres, minor renovations would be required to accommodate an information centre, while in others, major renovations may be required. In the smaller and older justice centres, there is no room for an information centre. Some staff suggested using unused office space or rooms for this type of resource.

Before this study was conducted, the project team had identified the Halifax Family Division of the Supreme Court as a pilot site for an information centre. This was based on the observed high volume of self-represented litigants in that court and information received from the coordinator of the parent information program for the province, who had come to a similar conclusion through her work and who

had independently initiated a proposal for such a centre. In June 2002, the Court Services Director with the operational responsibilities and policy development for the Family Courts and Family Division assumed responsibility for carrying out this pilot project.

**Recommendation #16:**
**Where space permits, make the waiting areas more comfortable by adding children's toys, culturally diverse artwork on walls, vending machines, and reading materials. Where space permits, add waiting rooms to allow opposing parties to wait in separate rooms.**

**Recommendation #17:**
**Locate information racks in areas where litigants typically wait for services, preferably in view of court staff to discourage theft or irresponsible use of the contents. In centres where there are concerns about theft, fix information racks to the walls. Make more racks available where space permits.**

**Recommendation #18:**
**Place importance on the availability of current public information relevant to court and related support services at the justice centres by supporting the brochure distribution system and staff tasked with responsibility for it, including maintaining supplies.**

**Recommendation #19:**
**Investigate the purchase of another style of rack that will adequately display 8 ½ by 11" brochures.**

**Recommendation #20:**
**Provide Departmental support, including allocation of resources, for the creation of an information centre for self-represented litigants at the Halifax site of the Supreme Court (Family Division) in the immediate future, with continued input from the Self-Represented Litigant Project, site court administration and provincial Parent Information Program coordinator.**